

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
WILLIAM YORK,	)	Bankruptcy Case No. 93-30992
	)	
Debtor.	)	
_____	)	
	)	
AGRIBANK, FCB, as Successor	)	
to DONALD HOAGLAND, Trustee,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 94-3084
	)	
WILLIAM YORK; THOMAS YORK;	)	
BILL D. YORK; and YORK	)	
ENTERPRISES, INC., a	)	
Corporation,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court on Motions to Dismiss filed by Defendants, William York, Bill D. York, Thomas York, and York Enterprises, Inc.; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Court is advised that, as to the Motion to Dismiss Amended Complaint filed by Defendant, Bill D. York, the Plaintiff has agreed to a dismissal of Bill D. York. The parties are to file an Order to that extent. As such, no further consideration of the Motion to Dismiss Amended Complaint of Bill D. York will be made.

In considering both the Motion to Dismiss Amended Complaint filed by Defendant, William York, and Defendants, Thomas York and York Enterprises, Inc., the Court finds that said Motions, in essence, seek to have the Plaintiff's Amended Complaint dismissed for failure to state a cause of action in that the Motions assert that the causes of action alleged in Plaintiff's Amended Complaint are all time barred pursuant to Ill. Rev. Stat., Chap. 110, ¶ 13-205. In response to these arguments, the Plaintiff argues that, while a five-year statute of limitations did exist covering the causes of action pled in the Amended Complaint, it may be able to circumvent the statute of limitations by either asserting the "discovery rule" or by proving that the Defendants' fraudulently concealed the transfers at issue in the Amended Complaint. In reviewing the arguments of the Plaintiff, the Court finds the case of In re Josephik, 72 B.R. 393 (Bankr. N.D. Ill. 1987), to be particularly enlightening. As to the "discovery rule," the Court finds that this Court-created doctrine could apply in this case if the Plaintiff can show that the five-year statute of limitations did not start to run until some time subsequent to the actual transfers in question and that the Plaintiff did not know or should not have known that it was injured at the time of the actual transfers. The Court further notes that, pursuant to Ill. Rev. Stat. Chap. 110, ¶ 13-215, the Plaintiff may be able to circumvent the five-year statute of limitations if it can be shown that the Defendants fraudulently concealed the basis for the causes of action pled in the Amended Complaint from the person or persons entitled thereto.

In the final analysis, the Court finds that, while the statute of limitations as cited by the Defendants may well prove to be a valid defense, there are questions and issues which have been raised by the Amended Complaint which may, if found in Plaintiff's favor, circumvent the statute of limitations defense. Given this finding, the Court must deny the Motions to Dismiss Amended Complaint in that a sufficient basis has been pled to state a cause of action under the theories advanced by the Plaintiff. The statute of limitations defense raised by the Defendants may be properly pled as an affirmative defense and raised at trial; however, at this stage of the pleadings, the Court finds it inappropriate to dismiss this matter merely on the pleadings. The Defendants will be given an appropriate period to file an answer, and a pre-trial hearing will be set to schedule future proceedings in this matter.

ENTERED: January 25, 1995.

/s/ GERALD D. FINES  
United States Bankruptcy Judge